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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Estate of WILLIAM R. DAVISON,  
Deceased.

MARILYN KRIEBEL,

Petitioner and Respondent,

v.

MATTHEW L. LINGO et al.,

Objectors and Appellants;

WILLIAM DICKEY, as Special  
Administrator, etc., et al.,

Claimants and Respondents.

D053626

(Super. Ct. No. SSDSC P190814)

APPEAL from a judgment of the Superior Court of San Diego County, Gerald C.

Jessop, Judge. Affirmed.

In 2006, Matthew and Samuel Lingo (together the Lingos) filed a lawsuit against William Davison and Elizabeth Fierro to set aside a deed that purported to convey from

Davison to Fierro an interest in certain real property (the Property) to which Davison held record title. After Davison died, the lawsuit was settled by a written settlement agreement containing a clause that is at the center of the present dispute. Fierro contended the clause allowed her to be reimbursed by Davison's estate for certain payments she made related to the Property, and the Lingos contended the clause assigned those costs to Fierro without any right to reimbursement. The court agreed with Fierro, and this appeal followed.

## I

### FACTUAL BACKGROUND

#### A. The First Lawsuit and First Settlement

In 1989, Davison and his wife Lois Davison (Lois) acquired the Property as joint tenants. In a grant deed dated June 8, 2000, Lois purportedly transferred her interest in the Property to herself and Linda Lingo as joint tenants "as Custodians for and Benefit of" the Lingos, then minor children. Lois died on August 28, 2000, and several hours after her death the June 8, 2000, grant deed was recorded.

In February 2001 Davison filed a complaint against Linda Lingo seeking to cancel the June 8, 2000, grant deed and to quiet title to the Property. In July 2001, the parties agreed to settle their dispute. Under that settlement agreement, Linda (for herself and as custodian for the Lingos) stipulated to a court order canceling the June 8, 2000, grant deed, and Davison agreed to execute a codicil to his will that bequeathed to the Lingos one-half of Davison's interest in the Property.

### B. The Second Lawsuit

Davison died on February 10, 2006. However, approximately three weeks earlier, Davison signed a deed conveying the Property to Fierro as a gift. The Lingos' lawsuit, filed the day before Davison died, asserted claims against Davison and Fierro and sought to set aside the deed from Davison to Fierro. A special administrator (Mr. Dickey) was appointed for Davison's estate to represent Davison in the litigation, and in December 2006 all parties participated in a mediation at which a settlement was reached. The settlement was documented in a January 2007 settlement agreement (Settlement Agreement).

### C. The January 2007 Settlement

The Settlement Agreement was contingent on approval of the Probate Court, and provided Fierro would transfer the Property to the estate within 15 days of court approval of the Settlement Agreement, and the administrator would then liquidate the Property.

Paragraph 2.d. of the Settlement Agreement provided:

"The net proceeds of the estate . . . subject to the payment of all estate expenses, claims and deductions shall be distributed one-half each to [Fierro] and to [the Lingos]. Prior to approval of this agreement by the Court, [Fierro] shall take any and all actions necessary (including, but not limited to, debt service payment of taxes and insurance) to assure and guarantee that the residence has no lien or encumbrances other than that existing on the date of death of [Davison]. [Fierro] covenants to maintain the [P]roperty in good repair and, upon transfer, that it will be tenant-free."

The Settlement Agreement also specified at paragraph 2.g. that "administrative expenses . . . , costs, and creditors' claims approved by the Administrator . . . or otherwise approved by the Court shall be paid from the gross proceeds of the sale of the [Property]

[and thereafter] the net estate shall be distributed" as provided above. The parties also acknowledged, at paragraph 2.h., that "during the Creditor's Claim period, Creditor's Claims may be submitted, including potential Creditor's Claims by . . . Fierro and/or on behalf of [the Lingos]. Nothing in this agreement precludes or limits such claims . . . ."

In February 2007 the special administrator petitioned for Probate Court approval of the Settlement Agreement, and the court approved it on April 11, 2007. Ms Kriebel was appointed as administrator of Davison's estate, letters of administration were issued, and the Property was ultimately sold in September 2007 for \$300,000.

## II

### THE DISPUTE

#### A. Fierro's Claim

In April 2008 Kriebel petitioned the Probate Court for approval of her first and final account as Administrator of Davison's estate. Her petition listed, as an "Unpaid Creditor's Claim," a claim filed by Fierro, and described the claim as seeking reimbursement for "a variety of expenses paid by her. The claim was not timely filed[,] however all expenses claimed are for post[-]death expenses, thus constituting expenses of administration. The proposed distribution reflects payment of the full amount of the 'claim.' " Fierro's declaration submitted in support of her claim showed the bulk of this claim represented payments she made for debt service, real property taxes, insurance, and utilities for the Property between the date of Davison's death and the time she transferred the Property to the estate.

## B. The Lingos' Objection

The Lingos filed an objection to the accounting and challenged the proposed payment of Fierro's claim. They asserted that, under paragraph 2.d. of the Settlement Agreement, Fierro was obligated to pay those expenses personally, without a right to reimbursement from the estate, for the period from Davison's death through the date of approval of the settlement.

Fierro opposed the Lingos' objection, asserting that although the provisions of paragraph 2.d. obligated her to pay the debt service, taxes and insurance for the Property prior to approval of the January 2007 Settlement Agreement by the Court, it did not specify that she was *barred* from reimbursement for the amounts she paid. Moreover, she noted the Settlement Agreement specifically *preserved* her right to submit a creditor's claim. She asserted the Settlement Agreement was made in recognition that the estate did not have the cash to make these payments, and she was assigned the obligation of preserving the Property from foreclosure until it could be liquidated, but the funds were expended for the benefit of preserving the estate and were properly charged to the estate.

The court found there was no language in the Settlement Agreement imposing on Fierro a nonreimbursable liability for the costs of preserving the Property pending its sale, and instead specifically provided the administrative expenses were to be paid from the proceeds of the sale of the Property. The court found the expenditures claimed by Fierro were proper administrative expenses, and therefore approved the payment of Fierro's claim. The Lingos timely appealed.

### III

#### APPLICABLE LAW

The interpretation of a litigation settlement agreement is governed by the same principles applicable to any other contract (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165), and the goal and purpose of contract interpretation is to give effect to the intention of the parties by determining what the parties meant by the words they used. (*Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 38.) "Our objective in construction of the language used in the contract is to determine and to effectuate the intention of the parties. [Citation.] It is the outward expression of the agreement, rather than a party's unexpressed intention, which the court will enforce." (*Winet*, at p. 1166.)

We generally apply a de novo standard of review to a trial court's interpretation of a contract. "The precise meaning of any contract, including a lease, depends upon the parties' expressed intent, using an objective standard. [Citations.] When there is ambiguity in the contract language, extrinsic evidence may be considered to ascertain a meaning to which the instrument's language is reasonably susceptible. [Citation.] . . . [¶] We review the agreement and the extrinsic evidence de novo, even if the evidence is susceptible to multiple interpretations, unless the interpretation depends upon credibility. [Citation.] If it does, we must accept any reasonable interpretation adopted by the trial court. [Citation.]" (*Golden West Baseball Co. v. City of Anaheim* (1994) 25 Cal.App.4th 11, 21-22, fns. omitted.) "[W]here . . . the extrinsic evidence is not in conflict, construction of the agreement is a question of law for our independent review.

[Citation.]" (*Appleton v. Waessil* (1994) 27 Cal.App.4th 551, 556; *Schaefer's Ambulance Service v. County of San Bernardino* (1998) 68 Cal.App.4th 581, 586 ["[T]o the extent the evidence is not in conflict, we construe the instrument, and we resolve any conflicting inferences, ourselves."].)

#### IV

#### ANALYSIS

The Lingos argue the trial court erred because its construction of the Settlement Agreement made paragraph 2.d. ineffectual and superfluous; a construction permitting Fierro to seek reimbursement relieved her of the responsibility of making all payments necessary to "assure and guarantee" that the Property had no lien or encumbrances other than those existing on the date of Davison's death. However, their argument conflates two distinct issues. The first issue was whether the Settlement Agreement placed on Fierro the sole responsibility for assuring all expenses for the Property would be paid until the Property was transferred to the administrator for liquidation. That issue is governed by the clear provisions of paragraph 2.d. and was not disputed: Fierro was required to fund those payments.

However, the second and distinct issue at the core of this dispute is whether Fierro, after satisfying that obligation, was barred by the Settlement Agreement from seeking reimbursement for those expenses. There is nothing in the express language of section 2.d. barring her right to seek reimbursement. Moreover, other provisions of the Settlement Agreement support the interpretation that Fierro was entitled to seek reimbursement: paragraph 2.h. expressly preserved the parties' rights to submit claims

against the estate ("Creditor's Claims may be submitted, including potential Creditor's Claims by [Fierro] . . .[and] [n]othing in this agreement precludes or limits such claims"), and paragraph 2.g. expressly contemplated that "administrative expenses . . . and creditors' claims . . . shall be paid from the gross proceeds of the sale of the [Property]" before distribution of the net estate.

The interpretation proffered by the Lingos would require us to both insert a nonreimbursement clause where none exists (*Ben-Zvi v. Edmar Co.* (1995) 40 Cal.App.4th 468, 473 [courts should not " 'insert in the contract language which one of the parties now wishes were there' "]) and to insert language limiting the types of claims the parties were entitled to submit under paragraph 2.h. Moreover, the Lingos' interpretation would create a windfall to them, and a concomitant detriment to Fierro, by conferring on the Lingos one-half of the value of the estate's only significant asset but relieving them of any of the financial burden of preserving that asset for the approximately 15-month period before it was transferred to the estate to be liquidated. The Lingos argue the expenditures cannot be deemed expenses that preserved the estate because many of the payments were made while Fierro was still contesting the Lingos' interest in the Property.<sup>1</sup> However, the overarching intent of the Settlement Agreement

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<sup>1</sup> The Lingos also asserted below, and contend on appeal, that the payments by Fierro should be deemed expenses attendant to her exclusive use and enjoyment of the Property, rather than as an expense to preserve the Property, because she or her family lived in the residence from the date of Davison's death until it was transferred to the administrator. However, Fierro's evidence showed she did not reside at the residence, and the Property was in such disrepair that it would not have been reasonable to attempt to rent the Property to a paying tenant, and her former father-in-law agreed to occupy the



appears to have been (1) the Property would be deemed restored to Davison's estate as though the deed to Fierro was a nullity, (2) Davison would be deemed to have made various specific bequests to Fierro and the Lingos, and (3) Davison would be deemed to have bequeathed one-half of the residue to Fierro and the remaining one-half of the residue to the Lingos. Under that interpretation of the Settlement Agreement, all expenses incurred to preserve the estate from the time of Davison's death until the estate was closed would properly be treated as administrative expenses, regardless of the source of funding for those expenses.<sup>2</sup>

We agree with the trial court's ruling that the expenditures by Fierro that preserved the Property pending its liquidation were properly allowed as administrative expenses of Davison's estate.

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Property as a caretaker only because Fierro needed an occupant to maintain the fire insurance on the Property.

<sup>2</sup> The Lingos argued below, and reassert on appeal, that the parties' intent--paragraph 2.d. barred Fierro from seeking reimbursement--is illuminated by considering what would have occurred had Fierro defaulted on her obligation under paragraph 2.d. Specifically, the Lingos argue, had Fierro not made the payments, the estate would have been entitled to assert a claim for breach of contract against her and recover such unpaid amounts, and the net effect of that recovery would be to place all of the costs of those payments on Fierro. However, this hypothetical assumes Fierro would not be entitled (in such a hypothetical lawsuit) to assert a cross-claim against the estate asserting that any amount she was required to pay as costs for carrying were offset by her ability to interpose a claim for administrative expenses against the estate in the identical amount.

DISPOSITION

The judgment is affirmed. Fierro shall recover costs on appeal.

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McDONALD, J.

WE CONCUR:

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NARES, Acting P. J.

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McINTYRE, J.